

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

DONALD ANTHONY WORKMAN,

Petitioner,

v.

CIVIL ACTION NO. 2:22-cv-00165

TIMOTHY KING, *Superintendent, Southwestern  
Regional Jail and Correctional Facility,*

Respondent.

**MEMORANDUM OPINION AND ORDER**

On April 6, 2022, the Petitioner, proceeding *pro se*, filed his *Application to Proceed Without Prepayment of Fees and Costs* (Document 1) and his *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 2). By *Standing Order* (Document 4) entered on April 8, 2022, the matter was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On April 18, 2022, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 7) wherein it is recommended that this Court find that the Petitioner's § 2255 Petition is unexhausted and premature, that the Court deny without prejudice the Petitioner's *Application to Proceed Without Prepayment of Fees and Costs* (Document 1), and dismiss without prejudice his *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 2) pending the exhaustion of the available state court


remedies. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by May 5, 2022.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*. The Court **FINDS** that that the Petitioner's § 2255 Petition is unexhausted and premature. Accordingly, the Court **ORDERS** that the Petitioner's *Application to Proceed Without Prepayment of Fees and Costs* (Document 1) be **DENIED WITHOUT PREJUDICE**, that his *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 2) be **DISMISSED WITHOUT PREJUDICE** pending the exhaustion of the available state court remedies, and that this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: May 12, 2022

  
IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA